

**From:** "Morris, Vicki (MORRISVR)" <MORRISVR@UCMAIL.UC.EDU>  
**To:** "phl@nrc.gov" <phl@nrc.gov>  
**Date:** 10/16/02 9:28AM  
**Subject:** RE: Concerns with NRC compatibility category for 10 CFR 71.10 (b) and (c)

I have had no response from this email. Is there a problem?

Vicki

> -----Original Message-----

> From: Morris, Vicki (MORRISVR)  
> Sent: Wednesday, September 04, 2002 1:26 PM  
> To: 'phl@nrc.gov'  
> Cc: 'jll2@nrc.gov'; 'jmp1@nrc.gov'; 'dms4@nrc.gov';  
> 'bsinclair@utah.gov'; 'tdevine@crcpd.org'; 'Howard, Marcia (ODH)';  
> 'Suppes, Roger'; Andrews, John (ANDREJS); Talaska, Glenn (TALASKGG);  
> 'Swanson, Dan'  
> Subject: Concerns with NRC compatibility category for 10 CFR 71.10  
> (b) and (c)  
>

> My name is Vicki Morris and I am the RSO at the University of Cincinnati.  
> Last November I became concerned with a rule that had recently been  
> implemented by the Ohio Department of Health. The rule essentially  
> incorporated 10 CFR 71 into Ohio rule format. During the rule  
> implementation process the equivalent to 10 CFR 71.10 (b) and (c) were  
> removed from the Ohio rule. It was the removal of these parts of 10 CFR 71  
> that raised concern. Deleting the equivalent to 10 CFR 71.10 (b) and (c)  
> from the rule significantly changed how licensees must handle "low risk  
> shipments" of radioactive materials. Discussions and correspondences with  
> the Ohio Department of Health indicated that the equivalent to 10 CFR 71  
> (b) and (c) was deleted from the Ohio rule at the request of the NRC and  
> was due to the fact that the NRC had recently changed the compatibility  
> category for 10 CFR 71.10 (b) and (c) from "B" to "NRC". Since November I  
> have had multiple conversations with Ohio Department of Health personnel,  
> along with recent conversations with Terry Devine of the CRCPD and Jim  
> Lynch of NRC Region III. The conclusion and advice I received indicates  
> the change in compatibility category was possibly in error and my  
> perception of the effect was not what the NRC intended. Your name was  
> provided as the contact who could most effectively have the concern  
> investigated and make any applicable changes to the compatibility  
> category. (Note: I have copied this email to several individuals  
> recommended to me at the NRC. In addition I have copied this email to  
> individuals at CRCPD, OAS, ODH and here at UC to keep them informed of  
> action taken to try and resolve an issue that affects them.)  
>

> Effect of the Change

> 10 CFR 71, as stated in 10 CFR 71.0, applies to all shipments of  
> radioactive material by licensees outside the licensee's property. 10 CFR  
> 71.10 (b) and (c) consists of exemptions from the majority of the  
> regulations listed in 10 CFR 71 for "lower risk shipments" (e.g., type A  
> or less quantity, selected LSA or SCO shipments, less than 20 Ci of Am and  
> Pu). The exemptions in 10 CFR 71.10 (b) and (c) release licensees from all  
> parts of 10 CFR 71.10 except that part which requires a licensee to follow  
> DOT regulations (i.e., 10 CFR 71.5) and that part which restricts air  
> shipments of Pu (i.e., 10 CFR 71.88). By eliminating the exemptions listed  
> in 10 CFR 71.10 (b) and (c) the effect is that all parts of the regulation

> (i.e., all of 10 CFR 71) now applies to all shipments of radioactive  
> material, including "low risk shipments". Requirements added by the change  
> include having all packaging approved by the NRC, respective agreement  
> state or be generally licensed as delineated in the regulation and having  
> a NRC or agreement state approved quality assurance program, as described  
> in 10 CFR 71 subpart H.

>

> NRC Compatibility Category Reasoning

> As stated in the compatibility category tables, the exemption listed in 10  
> CFR 71(b) and (c) is "reserved to the NRC because it is designed to  
> delineate NRC's authority from the DOT's in the area of transportation of  
> radioactive materials. These provisions relinquish to DOT the control of  
> types of shipments that are of low risk both from radiation and  
> criticality standpoints. Further, to ensure that only low criticality risk  
> shipments are included in the area of DOT authority, these provisions  
> restrict the exemption to Type A and low-specific-activity (LSA) or  
> surface contaminated (SCOs) that either contain no fissile material or  
> satisfy the fissile material exemption requirements in (part) 71.53.  
> Finally, this exemption is reserved to the NRC because it does not relieve  
> licensees from DOT requirements by reason of NRC's authority, nor does the  
> exemption relieve licensees from the restrictions on air transportation of  
> plutonium imposed by Congress. Thus, Agreements States should not adopt  
> these provisions in order to retain their ability to implement all of 49  
> CFR as directed by DOT".

>

> At least in my opinion, the reasoning does not explain the results. It is  
> not clear that the exemptions delineate NRC's authority from the DOT's in  
> the area of transportation nor that with the exemptions the NRC  
> relinquishes to DOT the control of "low risk shipments". The exemptions,  
> as I understand them, only release a licensee from the extra requirements  
> listed in 10 CFR 71 and from experience I know that the NRC uses the  
> regulations in 10 CFR 71 (i.e., those listed in 10 CFR 71.5) to cite  
> licensees for failure to follow DOT regulations for "low risk shipments".  
> By deleting the exemptions licensees are still not relieved from DOT  
> requirements and are still not relieved from the restrictions on air  
> transportation of Pu.

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> I request/recommend the NRC reevaluate the current compatibility assigned  
> to 10 CFR 71 (b) and (c) and seriously consider either changing it back to  
> compatibility B or possibly to compatibility C.

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> I hope this email adequately and clearly expresses my concerns and the  
> effect of the NRC's change in compatibility category for 10 CFR 71(b) and  
> (c). From experience I know the effect of the change is hard to  
> comprehend, especially for those of us who are use to the exemption being  
> present. For many it takes several readings of the entire regulation, with  
> 10 CFR 71(b) and (c) deleted, for the overall effect of the deletion to be  
> understood. If you have any questions do not hesitate to call.

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